SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED.
MAY 17 1967

In the

SUPREME COURT OF THE UNITED STATES.

October Term 1966

No. 1324

DOMENICO MASTINI

Petitioner

v.

AMERICAN TELEPHONE AND TELEGRAPH COMPANY and WESTERN ELECTRIC CO.

Respondents

and

DOMENICO MASTINI

Petitioner

v.

NEW YORK TELEPHONE COMPANY.

Respondent.

# PETITIONER REPLY BRIEF.

Domenico Mastini
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## PETITIONER REPLY BRIEF

Respondents, in their brief in opposition, continue even before this Supreme Court their misrepresentation of facts of the case.

The petitioner knows that the reviewing function of this Court in the present case will be limited to know if in the Courts below were made plain errors in fact.

This is the case.

Respondents, citing case Magnum Co. v. Coty 262 U.S. 159,163 (1923), not pertinent, no applicable, maintain that the petitioner is trying to relitigate his case.

Instead it is no so.

In the present case the trial Court, without technical aid of expert witnesses, granted a summary judgement in an electronic matter making, consequently, several technical errors that not even the Court of Appeals could correct because it also was not skilled in the art.

Most important among said errors to have recognized the existence of a File Wrapper Estoppel. According the trial Court decision the inventor was "forced" by the Patent Office on prior art to an automatic method excluding semi-automatic method.

(Note that being totally lacking the prior art before the trial Court, this could not know if said prior art was or was not understandable by its judicial notice only. In such a case, by case Vermont Structural Slate Co. v. Tatko Slate Co. 233 F.2.9, (2 Cirnc.1956), it could not grant summary judgement. Please see page 32 Petition for writ.)

As a consequence, the trial Court excluded the inventor from the benefits of the theory of equivalents.

The Mastini original application had in its claims the Manual, semiautomatic and automatic method; therefore the inventor did not have the necessity of the theory of the equivalents. But since the Court had summarilly decided that his patent should be intended for sole autmatic method, if the Court had not declared said "estoppell", the Mastini patent could be read also as semiautomatic.

Purpose of the present petition for writ of certiorari is not, therefore, the relitigation of the case but that to submit to this Court principally these two basic questions:

1. Whether it was an error in fact having stated that "Mastini was "forced" to introduce an anutomatic method to accomplish disconnectiem"
when, instead the File History proves that said automatic disconnectiem was already in original application and if it was existent the inventor could not be forced by the patent Office to introduce a thing already introduced.

It is obvious that in order to introduce an automatic method it was necessary to introduce, in the original system, an automatic device, a relay, before inexixtent.

Yet, in the present case, looking patent Fig.1 and originall Fig.1 it is visible, also for not skilled in the art, that in both the Figures it is lacking any relays or other automatic "means".

Equally for both the Figures 2; in patent Fig.2 there are two relays solely, so as in original Fig.2. Relays 41 and 47 in patent, relays 1 and 2 in originall application (please see attached Table-File History).

Then, if none "new" element has been intoduced, no "new" method has been introduced.
The trial Court could not well understand the Figures, could not make said comparation.

If none new element has been introduced, the cited case I.T.S.Co. v. Essex Co. 272 U.S.429, is not pertinent.

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*File Wrapper Mastini Patent 2,129,332*
*Exhibit A to Affidavit of George C. Lord*

15342

332
Sept. 6.

Print of drawing as originally filed

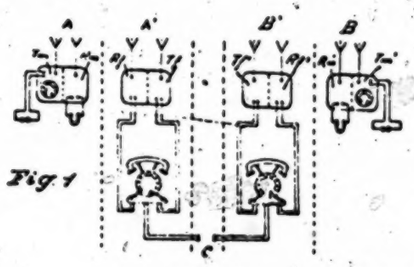


Fig 1

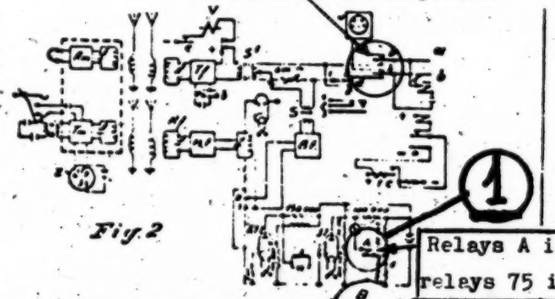
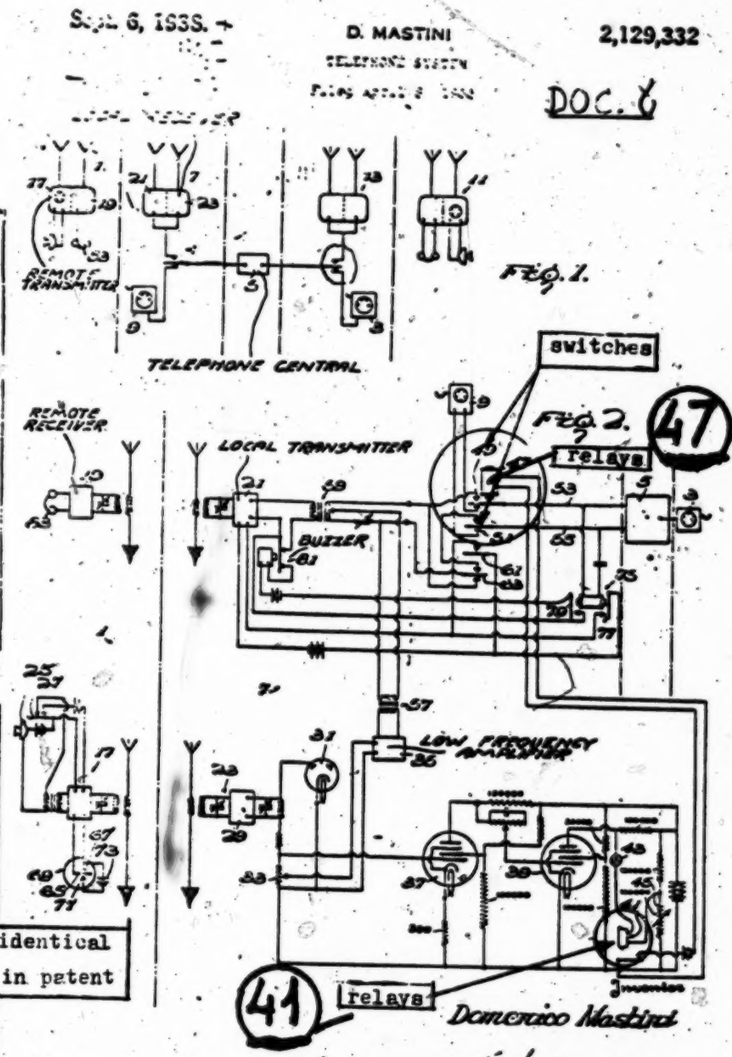


Fig. 2

switches -b- and-b-identical
switches 49-51 in patent

Relays A identical
relays 75 in patent

Relays B identical
relays 47 in patent




In original Fig.2 (left) same automatic means as in patent fig.2. If "automatic" disconnection in original application, Mastini could not be forced to include a thing already included.

A.

1 11 250-6.

2. ~~Whether~~ there it was another error in fact having stated in the Court of Appeals decision:

> "Again, as Mastini was forced to add this "sub-station" to his claims to avoid rejection on the prior art, he is estopped to now include what he was forced to abandon to obtain his patent"

when the File History proves that said "sub-station" was already, it also, in the original application.
(Please see the attached table File His.)

Said Court of Appeals' statement, not only is erroneous because it speaks of "addition" of thing already additioned, but it is also contradictory and confusing where state that " he is estopped to now include what he was forced to abandon to obtain his patent".
Said contradiction is evident and clear wherein the Court states at the biginning that Mastini "was forced to add this substation" and towards the end it then states that "he was forced to abandon to obtain his patent".

There exist a clear defect of logic in the motivation of the decision.

If one or both said errors will be recognized by this Court, justice will be given to the inventor.

If not, a grave irreparabile injustice will

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Apt. 6.

Print of drawing as originally filed.

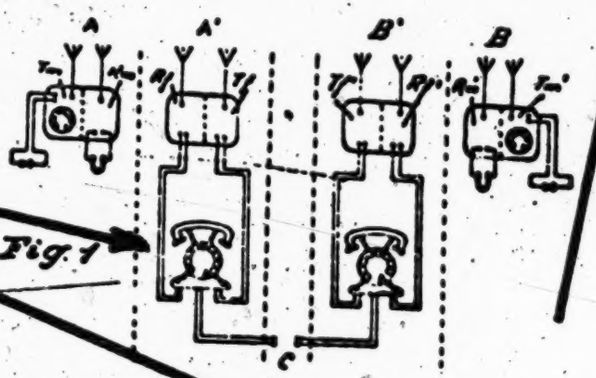



Fig. 1

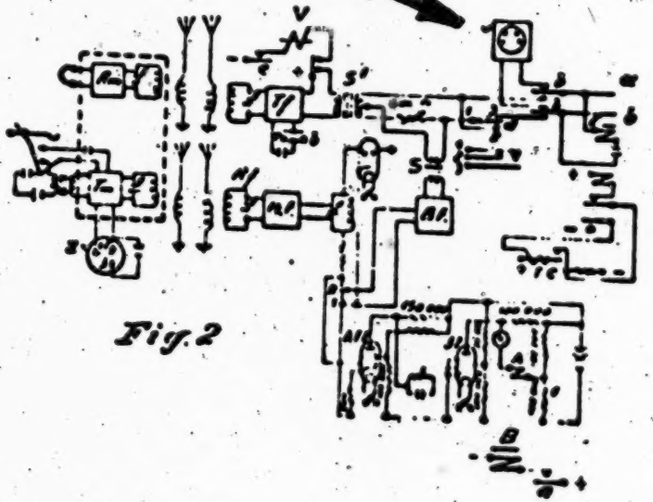


Fig. 2

be made to the inventor of that "MOBILE TELEPHONE" that in the 1936 the United States Department of Commerce made a special publication of seven pages where reads: that the Mastini radio-telephone was considered from the ELECTRICAL DIVISION of said Department as " a brillant example of the most recent progress in the telephonic communication" and that it " will play a large part in the life of the up-t-date man perhaps equal in importance to the introduction of the ordinary fixed telephone in the past";;
of that "MOBILE TELEPHONE" that in the 1955 a F.C.C's Official written "The Radio Mobile change the pace of the Nation", which patent vested in A.P.C. in 1942 remained "vested" until 1956, more than a year it had expired.

Thus the inventor, during said 8 years of non-justified vested period (after law 1947 permitting said return) was tortally deprived, without compensation, of the entire subatance of the patent granted.

. . .

The Justice of the Great U.S. should not permit as a final blow, that against an isolated pioneer inventor, pratically undefended, prevails, through a summary judgement upon affidavits of respondents' employees, without expert testimony and hearings, the occult power of the respondents.

THE PETITIONER BELIEVE THAT SAID POWER CANNOT CROSS EVEN THE THRESHOLD OF THE U.S.SUPREME COURT.

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may 15, 1967 Domenico Mastini